

APPEAL NO. 030777
FILED MAY 20, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was scheduled for November 5, 2002, but the appellant (claimant) failed to appear. However, the claimant responded to a ten-day letter. A CCH was held on February 12, 2003. The claimant again failed to appear in person, but appeared through his attorney. The hearing officer resolved the disputed issues by deciding that the claimant did not sustain a compensable injury on _____; that the claimant has not had disability; and that because the respondent (carrier) paid temporary income benefits (TIBs) within seven days of its first written notice, the carrier did not waive the right to contest compensability. The claimant appealed the waiver and disability determinations. The claimant argued that his injury is compensable as a matter of law because the hearing officer erred in determining that the carrier did not waive its right to dispute compensability. The carrier responded, urging affirmance.

DECISION

Affirmed.

It was undisputed that the carrier received written notice of the claimed injury on March 18, 2002. The claimant argues that the carrier waived the right to contest compensability of the claimed injury because the evidence established that the carrier did not pay TIBs until after the seventh day of its first written notice. The hearing officer found that beginning March 25, 2002, the carrier paid TIBs for the period of _____ through _____. A check dated March 25, 2002, for payment of TIBs was in evidence. Further, the adjuster testified that the checks are mailed the same day they are printed. Section 409.021(a) provides that the insurance carrier is to begin the payment of benefits as required by the 1989 Act or notify the Texas Workers' Compensation Commission and the claimant of its refusal to pay benefits within seven days after receiving written notice of the injury. The hearing officer's determination on the carrier waiver issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**STEVE ROPER
1616 SOUTH CHESTNUT STREET
LUFKIN, TEXAS 75901.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge